

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of _____ )	
Implementation of Section 621(a)(1) of _____ )	
the Cable Communications Policy Act of 1984 _____ )	MB Docket No. 05-
311	
as amended by the Cable Television Consumer _____ )	
Protection and Competition Act of 1992 _____ )	

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**COMMENTS OF THE CITY OF GREENSBORO**

These Comments are filed by the CITY OF GREENSBORO in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the CITY OF GREENSBORO believes that local governments can issue appropriate local franchises for new entrants into the video services field in a manner that is timely, procompetitive and efficient, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Greensboro is a city with a population of 238,440. Our franchised cable provider is Time Warner Cable (TW). Our community has negotiated cable franchises since 1994.

**Our Current Franchise**

Our current franchise began on October 24, 1994 and expires on October 24, 2009. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee

purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one (1) channel devoted to public access; one (1) channel devoted to educational access; and one (1) channel devoted to government access. The current franchise requires that three additional full-time channels be reserved for public, educational, and governmental access in the future should use of the established PEG access channels demonstrate the need for such additional capacity.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: For initial access equipment and facilities, TW agreed to provide the City a grant of \$750,000. In addition, TW was required to provide another \$250,000 for initial access equipment. During the first ten years of the renewal franchise, TW shall provide \$500,000 to be used to replace public, educational, and governmental access equipment as replacement of said equipment may be needed.

The City's franchise contains the following institutional network ("I-Net") requirements:

The franchise requires TW to construct, install, and maintain capacity (institutional network) on its cable television system to 41 locations, such as fire stations, libraries, the courthouse, a community college site and the municipal office building. TW must provide six fibers to each location, 4 to be used for a SONET ring and 2 to be used for analogue transmission of video signals. TW shall own this additional capacity and not charge the City for its use. However, any additional fibers requested by the City shall be provided by TW at cost to the City. The I-Net shall be used only for noncommercial educational and governmental purposes. The City uses the I-Net for computer connectivity, for Voice over Internet Protocol implementation, HVAC controls, card swipes, and video training IPTV.

Our franchise contains the following requirements regarding emergency alerts: TW shall provide an all-channel audio-only emergency alert systems for use by the City. Emergency messages shall be able to be initiated by any designated City official from any touch-tone phone with an access code. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

- (a) *Subscriber information.* TW shall furnish to each subscriber a simple, but thorough written explanation of all services offered; the fees, charges, terms and conditions of such services; information regarding billing and service calls, complaints, and the availability of parental control devices; and a complete statement of the subscriber's right to privacy in conformance with 47 U.S.C. Section 631. TW shall also provide subscribers with privacy information and other information required by the FCC at least once a year and other service related information at any time upon subscriber's request.
- (b) *Business offices and personnel.* TW shall maintain a business office within the City which shall, at a minimum, be open for business 8 AM – 6 PM, Monday – Friday, and 10 AM – 4 PM on Saturday, and for repair service (by phone) 24 Hours/Day, 7 Days/Week. TW shall also provide personnel, telephone service (including a locally listed telephone number), and other equipment, as needed, to ensure timely, efficient and effective service to consumers and for the purpose of receiving inquiries, requests, and complaints and for the purpose of payment of subscribers' service charges.
- (c) *Subscriber complaints.* TW shall promptly respond to and resolve all subscriber complaints as specified in FCC regulations, the franchise agreement, and the City's ordinances.
- (d) *Major outages.* TW shall maintain records of all major outages indicating the estimated number of subscribers affected, the date and time of first notification of an outage, the date and time service was restored, the cause of the outage and a description of the corrective action taken. Such records shall be available to the City during normal business hours upon reasonable prior notice and shall be retained in TW's files for not less than three years. A summary of such records shall be prepared by TW and submitted to the City annually.
- (e) *Customer handbook.* TW shall provide a customer handbook to all new subscribers and, thereafter, upon request. TW's written handbook shall, at a minimum, comply with all notice requirements in the City's ordinance, those promulgated by the FCC and those provided for in the franchise agreement. TW shall notify subscribers annually of the availability of the customer handbook. In addition, information on connecting home electronics shall be provided. If TW changes its policies, subscribers shall be notified in a timely manner. Also, TW shall distribute annually to subscribers rate and consumer complaint information.
- (f) *FCC and Consumer standards.* TW shall meet the FCC's Standards for Customer Service and the customer service standards specified in the franchise agreement and the City's ordinance. If TW does not meet the busy standards for two consecutive quarters, TW shall take such action as is necessary in order to satisfy the busy standards. At such time as TW does not meet the FCC, franchise and ordinance requirements for repair for two quarters, TW shall take such action as necessary in order to ensure that such standards are met during the next quarter. TW shall provide annual

management data related to compliance with the FCC's Standards for Customer Service and the standards of the franchise agreement and the City's ordinance.

- (g) *Downgrades.* Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC rules. The billing for such service will be effective immediately and such disconnection or downgrade shall be made as soon as practicable. A refund of unused service charges shall be paid to the customer within sixty days from the date of termination of service.
- (h) *Outages.* TW, upon subscriber request, shall credit the subscriber's account for outages of 24 hours or longer.
- (i) *Subscriber contracts.* All contracts between TW and its subscribers must comply with the franchise agreement and the City's ordinance.
- (j) *Negative option billing.* TW shall comply with Federal law regarding negative option billing.
- (k) *Payment stations.* TW shall at all times use its best effort to maintain a sufficient number of remote payment stations to meet the reasonable needs of the community.
- (l) *Repair calls.* TW shall offer subscribers appointment windows for repair in accordance with FCC rules and regulations. TW will conduct repair call on weekdays and weekends. Under normal operating conditions, TW will respond, or if needed, conduct an on-site repair, within 24 hours of a subscriber request.
- (m) *Installation.* Service to subscribers shall be installed within seven days of a request.
- (n) *Cable guide.* TW shall provide a cable guide to all subscribers. Such guide may be delivered in written or electronic form.
- (o) *Billing capacity.* TW shall use its best efforts to resolve billing complaints within seven days.
- (p) *Response to the City.* The City will notify TW of subscriber complaints received by the City. TW shall use its best efforts to contact subscribers whose complaints have been taken by the City within 24 hours of City notice to TW. TW shall respond by telephone or in writing to the City within three business days regarding the resolution of the such subscriber complaints. TW shall provide to the City the name of the person responsible for handling City complaints. Such person shall have the internal authority to have various departments respond to City complaints as soon as possible.
- (q) *Property access.* With respect to property access, TW shall seek permission if the occupant is present. If no one is available, TW's technician will attempt to complete necessary repairs outside. Entry shall be gained only with the permission of the owner or occupant of the premises. TW shall not enter a home to perform any service unless a responsible adult is present.

The City of Greensboro's cable system originated in 1966 and the assets and facilities were ultimately acquired by TW. By the time the franchise process was established, the system was largely in place. Our franchise requires that the cable operator currently provide cable residential service to all areas of the City in the corporate limits of the City. TW shall extend service to all new residences, all unwired developments, and commercial developments within six months of a request pursuant to the following requirements.

(1) *Line extension policy.* TW shall extend its cable system and make cable service available to every existing residentially zoned area within the franchise area and within six months for newly annexed areas, whenever there is density of at least twenty residential dwelling units per cable plant mile, as measured from the existing facilities of TW's cable system in the franchise area. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total length of aerial or underground cable necessary to make service available to the residential dwelling units in such area in accordance with TW's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system. Such points of access shall be the nearest point that is located within the public streets or other public property. The total cable length shall exclude the drop cable necessary to serve individual subscriber premises.

(2) *Contribution-in-aid.* If an area does not meet the required number of potential subscribers per cable mile, TW shall bear its pro-rata share of the current construction costs based upon the actual number of potential subscribers per mile. For example, if there are five potential subscribers in a residentially zoned area, TW's share would be  $5/20^{\text{ths}}$  or  $\frac{1}{4}$  of the construction cost. The remaining construction costs shall be borne on a pro-rata basis by each cable television subscriber. After completion of the project, should additional subscribers request and receive cable television service, the pro-rata shares shall be recalculated. Any new subscriber shall pay the new pro-rata share and all prior contributing subscribers shall receive appropriate refunds. In any event, at the end of two years from the completion of residential construction in the area, the subscribers shall no longer be eligible for refunds, and any amounts paid in construction costs will be credited to TW's plant account.

(3) *Business extensions.* TW shall extend its cable system and make cable service available to every business in the franchise service area in any case where the business subscriber agrees to pay for the labor costs incurred and materials used in making the extension. Provided, however, if the business subscriber is within 200 feet of an existing feeder, the business shall pay only an installation fee.

In order to ensure that our residents have access to current telecommunications technologies, our franchise provides that TW shall provide a modern City-wide cable communications system and that services to residents will be uniformly available. Our cable system was rebuilt in 1996 and terms for upgrade were negotiated at that time. TW was required to construct a system that delivers cable television signals processed at 750 MHz (100 channels) utilizing a fiber to the feeder design. The system supports 77 analogue channels, plus 200 MHz is available for digital transmission. The rebuilt system uses all new fiber optics and electronic devices. Fiber optic receiver nodes divide the distribution of cable signals to 500 homes per fiber node or less. The rebuilt system serves no more than 500 single family homes per node and no more than 1800 units (multiple dwelling units) will be served by any one node. The franchise requires TW to provide and activate the 5-42 MHz return path. The City and its consultant reviewed and approved the system design. Our system is capable of providing cable modem service to residents who receive cable video service provided the residents subscribe to and pay for cable modem service.

Our franchise provides that the franchise shall not be construed as any limitation upon the right of the City to grant to other persons, rights, privileges, or authorities similar to the rights, privileges, and authorities set forth in the franchise agreement, in the same or other streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time during the term of the franchise or renewal thereof, if any, such additional franchises for a cable communications system as it deems appropriate. Any additional franchises granted by the City shall contain similar terms and conditions as the franchise agreement, including without limitation provisions of public benefit with similar costs, taking into account the size and population of the franchised areas. TW has agreed in the franchise agreement to indemnify and hold the City harmless from claims by third parties that arise out of compliance with the most favored nations provision to the extent such claims are not barred by law.

Our ordinance also provides that any franchise granted shall be nonexclusive and that the City may grant at any time such additional franchises for a telecommunications system as it deems appropriate. City ordinance further provides that the grant of a franchise does not establish priority for use over the other present or future permit or franchise holders or the City's own use of the streets and public rights-of-way.

Our franchise contains the following insurance and bonding requirements: TW is required to furnish a performance bond for the life of the franchise in the amount of \$100,000 to guarantee the faithful performance of all its obligations under the franchise and under City ordinance. By ordinance, TW must maintain general liability insurance insuring the City in the minimum amount of \$1,000,000 for property damage per occurrence; \$2,000,000 for property damage in the

aggregate; \$1,000,000 for personal bodily injury or death to any one person; and \$2,000,000 for bodily injury or death aggregate per single accident or annual aggregate. TW must also maintain automobile liability insurance for owned and non-owned (rental) vehicles in the minimum amount of \$2,000,000 for bodily injury and death per occurrence; \$1,000,000 for bodily injury and death to any one person; and \$500,000 for property damage per occurrence. TW must also maintain workers' compensation and employer's liability insurance in the minimum statutory amount for workers' compensation and \$500,000 for employer's liability.

Currently, the cable franchise provides the cable operator a limited license to access the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it cuts into pavement on the City's rights-of-way. The permit fee is \$30 for the first 100 square feet and 30 cents for every additional square foot over 100.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The City has regulatory authority over the franchise and the holder of the franchise, including the authority to enforce the franchise agreement and the controlling ordinance provisions, the authority to award, renew, extend or terminate the franchise, the authority to consent or withhold consent to transfer of the franchise, the authority to evaluate performance under the franchise, the right to inspect all books, records, reports, maps, plans and financial statements of the franchisee and the right to inspect all franchisee facilities or installations that are provided for by the terms of the franchise. In addition, the franchise agreement provides that liquidated damages may be imposed on TW for violations of material provisions of the franchise agreement or ordinance (\$300 per day per violation), for failure to comply with PEG requirements (\$300 per day per violation), and for failure to complete construction or to extend service as provided in the franchise agreement (\$600 per day per violation).

### **The Franchising Process**

The cable system serving our community also serves the county in which the City is located. In 1999, the City worked together with the county to assure upgraded cable facilities and services for residents annexed into the City's system but who had been part of TW's county franchise. This cooperation between the City and the county allowed the company to better serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs. Moreover, the franchise agreement requires the City and TW to cooperate in good faith to obtain support for access and interconnection from the county.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our franchise ordinance provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: When the franchisee finds conflict between the new or modified law or regulation and the laws or regulations of the City or between the new or modified law and the franchise agreement, the franchisee shall notify the City of the point of conflict believed to exist. The City may notify the franchisee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the franchisee shall negotiate in good faith development of alternate provisions which shall, to the extent permitted by law, materially maintain the rights of the City as established under the franchise ordinance and the franchise agreement.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and imposes consequent additional obligations on the local government. For instance: If the City contends that TW is not in compliance with the terms of the franchise, it must provide TW with written notice of its contentions and allow TW 60 days to cure or begin to cure the non-compliance. If the City continues thereafter to believe TW is in noncompliance, it shall provide written documentation and evidence to the City Council within 120 days of its initial notice to TW that TW was noncompliant. After receipt of the documentation and evidence, the City Council shall schedule and give public notice of a public hearing. At the public hearing, TW shall have the right to present documentation and evidence in support of its position and contentions. If the City Council should find TW in noncompliance, it is required to a resolution stating the same, and TW has the right to contest Council's action in a court of law.

### **Competitive Cable Systems**

Our community

- has never been approached by a competitive provider to provide service.
- has not denied any provider the opportunity to serve in our community.
- has mechanisms in place to offer the same or a comparable franchise to a competitor upon request.



## **Conclusions**

The local cable franchising process functions well in Greensboro. As the above information indicates, we are experienced at working with cable providers both to see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Greensboro therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

**City of Greensboro**

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